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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,856	07/25/2003	Joachim Grutze	ZTP01P16101	2645
7590 03/23/2005 LERNER AND GREENBERG, P.A. POST OFFICE BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER PRICE, CARL D	
			ART UNIT	PAPER NUMBER

3749

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,856

Applicant(s)

GRUTZKE ET AL.

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Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12/27/2004 and 12/29/2004 have been fully considered but they are not persuasive.

Applicant argues that:

“Radke does not show a pivot axis being disposed at a fixed position in the housing, as recited in claims 1 and 20 of the instant application. The Radke reference discloses a hinge shaft (38) for pivoting the door (26). The hinge shaft moves into the housing after the door (26) has reached a horizontal position. Radke does not disclose that the hinge shaft (3E) is disposed at a fixed position in the container. This is contrary to the invention of the instant application as claimed, in which a pivot axis is disposed at a fixed position in the housing.”

Applicant further argues that:

“The Radke reference discloses that glide members (44 and 45) move along tracking members (42 and 43) after the door (26) is in a completely horizontal position, and not during a pivoting movement of the door. Because Radke discloses that the glide members (44 and 45) do not move until the door (26) is done pivoting and is in a horizontal position, ‘the Examiner's comments that Radke discloses the at least one guide element (44)’ is guided in the guide track during a pivoting motion of the door are not accurate.

The examiner disagrees with applicant's understanding of the prior art reference Radke and the manner in which the elements of applicant's claimed invention are met by the pivotal door apparatus disclosed in Radke.

Applicant's attention is directed to the following recitations appearing in column 5 of Radke and which are relevant to applicant's claimed invention:

“(18) The rotation of door 26 has heretofore been described in a two step process for the purpose of simplicity: door 26 is moved from the closed position to the intermediate position as the door rotates about the first axis A, and then door 26 is moved from the intermediate position to the open position as door 26 rotates about the second axis B. It should be noted that due to gravity, the door tends to move to the open position once the user has moved the door to the intermediate position. Thus the door can be moved to the open position with a minimal amount of effort. Alternatively, with some practice the user can easily accomplish a smooth transition between the steps with no pause so the door moves from the closed to the open position in one continuous motion, although the user would have to use more effort to accomplish this result.

(19) In the two step process, the first axis A is stationary and the second axis B moves in the direction shown by arrow I in FIG. 2, as the door moves from the closed to the intermediate position. As the door moves from the intermediate to the open position, the second axis B is stationary and the first axis A moves in the direction shown by arrow J in FIG. 8.

(20) In the alternative process, however, first axis A and second axis B are essentially moving simultaneously; axis A generally moves in the direction shown by arrow J in FIG. 3 and axis B generally moves in the direction shown by arrow I in FIG. 2.

Thus, contrary to applicant's assertion that the “glide members (44 and 45) move along tracking members (42 and 43) after the door (26) is in a completely horizontal position”, the operation of the Radke door “generally moves in the direction shown by arrow J in FIG. 3 and axis B generally moves in the direction shown by arrow I in FIG. 2.” As see in Figure 8 of Radke the door (26), even after it has moved into the chamber, remains in an inclined orientation. Radke clearly states that “... first axis A and second axis B are essentially move simultaneously. Indeed, Radke provides no discussion regarding the door (26) is in “a completely horizontal position”.

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With regard to the pivoting axis being “disposed at a fixed position within the housing”, It is noted that all the door of Radke pivots about an axis defined at the lower pivot of member (32) which is located within the housing.

For the reasons set forth herein above and for the reasons stated in the rejection of the claims herein below, the examiner maintains the position that the limitations of the invention set forth in applicant’s claims are met by Radke.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

he has abandoned the invention.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims rejected under 35 U.S.C. 102(b)

In regard to claims 19 and 20, the terms “appliance” and “oven” are deemed to be merely a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use,

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then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In regard to claim 20, the term “oven” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claims 1-12, 14, 19, 20: Rejected under 35 U.S.C. 102(b)

Claims 1-12, 14, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US004726253 (RADKE).

US004726253 (RADKE) shows and discloses an apparatus, comprising:

- a housing (20) defining a useful space (14) and a stowage space (below 18);
- a pivotable door (26) closing off the useful space when the door is in a closed position and disposed at least partly in the stowage space when the door is in an at least partly opened position; and
- a guide system (42) guiding the door in a pivoting motion between the closed position and the open position;
- the guide system having:

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- a pivot axis (not referenced; lower pivot of link 32) being disposed at a fixed position in the housing, and alternatively the door includes pivot axis (38) which is disposed at a fixed position in the housing (i.e. – fixed relative to guide element (44) which is located in the housing);
- a guide track (42); and at least one guide element (44) guided in the guide track, the guide system guiding the door along the guide track during a pivoting movement of the door;
- the door has an end (40) pivoting a direction of the stowage when the door is opened;
- the pivot axis (not referenced; lower pivot of link 32) is disposed in front of the stowage space (12,13) and within the housing;
- the guide element (44) is disposed away from the pivot axis and in a direction of the pivot end;
- at least one holding/latching mechanism (30) holding the door in at least one position;

Claims 1-7, 9, 10, 15-18: Rejected under 35 U.S.C. 102(b)

Claims 1-7, 9, 10 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by US000646200 (ALLEN) (of record).

US000646200 (ALLEN) shows and discloses an apparatus, comprising:

- a housing defining a useful space and a stowage space;

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- a pivotable door (b) closing off the useful space when the door is in a closed position and disposed at least partly in the stowage space when the door is in an at least partly opened position; and,
- a guide system (2, 8, 9) guiding the door in a pivoting motion between the closed position and the open position;
- the guide system having:
- a fixed pivot axis including rollers (9) being disposed at a fixed position in the housing;
- a guide track (2); and two guide elements (3) guided in the guide track, the guide system guiding the door along the guide track during a pivoting movement of the door;
- the door has an end pivoting a direction of the stowage when the door is opened;
- the pivot axis (9) is disposed in front of the stowage space (12,13) and within the housing; and,
- the guide element (2) is disposed away from the pivot axis and in a direction of the pivot end.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

In particular, applicant's attention is directed to:

- ALLBERT which shows a fixed pivot (15);
- NOBLE which shows a fixed pivot (16);
- DEAN et al which show a fixed pivot (14,26);
- WHALEN which shows a fixed pivot (30);
- FRICANO which shows a fixed pivot (59);
- LINDENMNN ET AL which show a fixed pivot (29); and,
- DEMURA ET AL (previous cited of record) showing a fixed pivot (9).

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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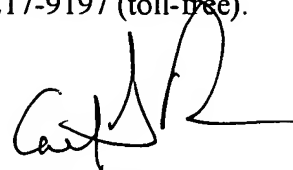
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
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